

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION I

CACR06-211

September 20, 2006

BRUCE HAMILTON

APPELLANT

APPEAL FROM THE OUACHITA
COUNTY CIRCUIT COURT
[CR-2005-112-4]

V.

STATE OF ARKANSAS

APPELLEE

HON. CAROL CRAFTON ANTHONY,
CIRCUIT JUDGE

AFFIRMED

Appellant Bruce Hamilton was convicted of commercial burglary, a class C felony. He was sentenced by the jury as an habitual offender to a term of twenty years in the Arkansas Department of Correction. For his single point on appeal, Hamilton argues that there was insufficient evidence presented to establish that he had four prior felonies. Specifically, he claims that the trial court erred in its determination that a judgment and conviction order from Pulaski County was sufficient to prove one of his felony convictions and, as such, he should have been sentenced as a three-time felon as opposed to a four-time felon. We affirm.

On appeal, we must determine whether there is substantial evidence to support a conclusion that Hamilton was previously convicted of the felony in question. *E.g., Mulkey v. State*, 330 Ark. 113, 118, 952 S.W.2d 149, 152 (1997). A prior felony conviction must be

proven with evidence that satisfies the trial court beyond a reasonable doubt. *See* Ark. Code Ann. § 5-4-504(a) (Repl. 2006). A certified copy of a previous conviction is sufficient proof to support the use of that conviction in sentencing a defendant as an habitual offender. *See, e.g., Bynum v. State*, 318 Ark. 87, 96, 884 S.W.2d 248, 254 (1994).

Hamilton challenges whether there was substantial evidence to prove a felony conviction based on a judgment and commitment order for a conviction for possession of a controlled substance. The order, which was the subject of extensive scrutiny by the trial court, was sufficient to prove that Hamilton received a felony conviction. It is true that the trial court originally expressed doubt about the order because the judge at the 1999 trial failed to enter any notations on the form concerning the conviction or sentence. In fact, the order provided only the date of trial (8/02/1999), appellant's name (Bruce Hamilton), the docket number of the case (CR99-2197), Hamilton's birthday, race, gender, and tracking identification, the name of his attorney (Tim Boozer), the name of the prosecuting attorney (Elizabeth Thomas), the date of the offense (4/17/1999), and the code section and name of offense charged (section 5-64-401; possession of controlled substance, sch. I, II).

The order was signed by the trial judge, John B. Plegge, and was marked "9/13/1999." Further, the copy of the order presented to the court during the sentencing phase of Hamilton's trial was certified by the Pulaski County Circuit Clerk on November 2, 2005, by a stamp and an impressed seal, as "a true and correct copy of the original judgment."

Additionally, the first page of the order contained a handwritten notation indicating that Hamilton had been committed for failure to pay fines and court costs.

At the outset we note that the criminal violation recorded on the 1999 order was possession of controlled substance, schedule I and II, and the order specifically cited section 5-64-401. By its terms, any conviction under this code section for possession of a schedule I or II substance is a felony. *See* Ark. Code Ann. § 5-64-401 (Supp. 1999). Thus, this properly authenticated copy of the original judgment and conviction order provides sufficient evidence to support the trial court's conclusion that Hamilton had previously committed four felonies.

Further, during the sentencing phase of his trial, Hamilton admitted that he had committed four felonies:

Q: Mr. Hamilton, you have heard that I recited a few moments ago about your felony history.

A: Yes, I have.

Q: Is all that true?

A: Yes, I have. And then my employer knows about that.

Q: Okay. My question to you, is it true, you have four prior felony convictions, is that true?

A: Yes, I have.

Therefore, had the trial court erred in admitting the challenged Pulaski County-conviction record, the error was made harmless beyond a reasonable doubt by Hamilton's own admission. *See, e.g., Coon v. State*, 76 Ark. App. 250, 254, 65 S.W.3d 889, 892 (2002).

Further, if the fourth felony were discounted in its entirety, Hamilton could have received the same twenty-year sentence, based on only three prior felony convictions. *See*

Ark. Code Ann. §§ 5-4-501(a)(1)(A)(ii), (a)(2)(D) (Supp. 2005). On appeal, Hamilton does not challenge the proof submitted on the three other felonies. Therefore, he cannot show that he was prejudiced by the trial court's alleged error in sentencing him as a four-time felon rather than as a three-time felon.

Affirmed.

HART and NEAL, JJ., agree.